Private law and the courts

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Hong Kong's courts reached the property question at the same time as Singapore's. In *Re Gatecoin Ltd* the Court of First Instance held in 2023 that cryptocurrencies are property capable of being held on trust, applying the *Ainsworth* indicia and following the Singapore and New Zealand authorities. On the facts, however, the court found that the exchange's later terms of service had turned the relationship into a debtor-creditor one, so that most customers ranked as unsecured creditors.[1] The decision has become the standard citation in Hong Kong and is persuasive in Singapore, where *ByBit* reached the same property conclusion. Its second holding carries the warning that Part J, Chapter V, repeats for Singapore: the customer's position depends on the terms, so that an exchange which changes its terms can turn beneficiaries into creditors with a click.

For enforcement, Hong Kong offers the common-law toolkit that Singapore offers: proprietary and Mareva injunctions, Norwich Pharmacal and Bankers Trust orders against exchanges and, since 2022, service by NFT on persons unknown. The courts are experienced in cross-border fraud and have treated crypto cases as a variant of the trade-finance and investment frauds they have handled for decades. The author's practice has used Hong Kong disclosure orders against exchanges in parallel with Singapore proceedings and Swiss criminal complaints in the same fraud. The three

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systems cooperate better than their formal mutual-assistance channels would suggest, because the exchanges themselves hold the information and respond to a court order from any respected jurisdiction.

Notes

1. Re Gatecoin Ltd [2023] HKCFI 914, Linda Chan J, at [45] to [62] on the property question and at [70] ff. on the trust analysis of the successive terms of service. ↩

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